N^{o}. 48749-7-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

CITY OF TACOMA
Respondent,

v.

ANTONIA RAINWATER,
Appellant.

REPLY BRIEF OF APPELLANT

Appeal from the Superior Court of Pierce County,
Cause No. 15-1-05041-1
The Honorable Frank Cuthbertson, Reviewing Judge

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I. REPLY

1. Ms. Rainwater challenges the lawfulness of her warrantless arrest in her home and is not asserting that probable cause did not exist to arrest her.

At pages 8-11 of its Response brief, the City argues that probable cause existed to arrest Ms. Rainwater for domestic violence related assault in the fourth degree. Ms. Rainwater does not dispute that the facts known to Officer Hovey were sufficient to support an objectively reasonable belief that Ms. Rainwater had committed fourth degree domestic violence assault. Ms. Rainwater challenges Officer Hovey's decision to arrest Mr. Rainwater in her home for the commission of that misdemeanor crime without first obtaining a warrant. The City's argument at pages 8-11 of its brief is irrelevant to any issue before this court and should be disregarded.

2. The City may not argue exigent circumstances permitted a warrantless entry into Ms. Rainwater's home to arrest her for the first time on appeal.

As discussed in Ms. Rainwater's Opening Brief, when the City claims exigent circumstances permitted police to perform an otherwise unconstitutional seizure, the City bears a heavy burden to show the search falls within on of the "narrowly drawn" exceptions[1] and the City must establish the exception to the warrant requirement by clear and convincing

[1] *State v. Garvin*, 166 Wn.2d 242, 250, 207 P.3d 1266, 1270 (2009), *citing State v. Jones*, 146 Wn.2d 328, 335, 45 P.3d 1062 (2002).

evidence.[2]

Also as pointed out in Ms. Rainwater's Opening Brief, the City did not argue at trial or on appeal to the Superior Court that any exigent circumstances existed. The City failed to even attempt to meet is burden that exigent circumstances existed.

A party may not generally raise a new argument on appeal that the party did not present to the trial court.[3] A party must inform the court of the rules of law it wishes the court to apply and afford the trial court an opportunity to correct any error.[4]

For the first time on appeal, at pages 12-15 in its Response Brief the City argues that exigent circumstances existed that authorized the warrantless arrest of Ms. Rainwater in her residence. This court should ignore this argument since it was not raised in the trial court.

3. Exigent circumstances did not exist which would have authorized the warrantless arrest of Ms. Rainwater in her home for committing a misdemeanor offense.

In an abundance of caution, should this court decide to consider the City's argument regarding the existence of exigent circumstances authorizing the warrantless arrest of Ms. Rainwater in her home, Ms. Rainwater submits the following argument.

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[2] *Garvin*, 166 Wn.2d at 250, 207 P.3d 1266, *citing State v. Smith*, 115 Wn.2d 775, 789, 801 P.2d 975 (1990).
[3] *In re Det. of Ambers*, 160 Wn.2d 543, 557 n.6, 158 P.3d 1144 (2007).

a. The City fails to cite any authority that would authorize the warrantless arrest of Ms. Rainwater in her home for commission of a misdemeanor crime.

At page 12 of its Response Brief, the City argues, "[Ms. Rainwater]'s argument that absent some exigent circumstance or warrant, the officers could not have entered the residence to make an arrest is without merit." However, it is the City's argument that lacks merit and support in the law.

As pointed out in Ms. Rainwater's Opening Brief, absent a warrant, "police entry into a private home to make a misdemeanor arrest is per se invalid."[5] "When the government's interest is only to arrest for a minor offense, that presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate."[6]

The City ignores controlling law and fails to cite authority to support its position that police may enter an individual's home without an arrest warrant to arrest that individual for committing a misdemeanor crime.

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[4] *Smith v. Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351 (1983).
[5] *State v. Hatchie*, 161 Wn.2d 390, 399, 166 P.3d 698 (2007).
[6] *Hatchie*, 161 Wn.2d at 399, 166 P.3d 698, *citing Welsh v. Wisconsin,* 466 U.S. 740, 750, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984).

b. No exigent circumstances existed which would authorize the warrantless entry into Ms. Rainwater's home to arrest her.

The City cites *State v. Cardenas*, 146 Wn.2d 400, 47 P.3d 127 (2002) as authority supporting the City's new argument that exigent circumstances existed that would justify the warrantless entry into Ms. Rainwater's home to arrest her. In *Cardenas*, the court was analyzing the lawfulness of the warrantless entry of police office into a hotel room and the subsequent search of that room by the officers.[7] The *Cardenas* court identified six factors used

> as a guide in determining whether exigent circumstances justify a warrantless entry and search: (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) whether there is reasonably trustworthy information that the suspect is guilty; (4) there is strong reason to believe that the suspect is on the premises; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the entry is made peaceably.[8]

However, applying these factors to the facts of this case reveals that no exigent circumstances existed authorizing the police action.

First, the police were arresting Ms. Rainwater for fourth degree assault, the most minor degree of that crime, and the injuries allegedly caused by Ms. Rainwater were literally minor scratches.

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[7] *Cardenas*, 146 Wn.2d at 403-404, 47 P.3d 127.
[8] *Cardenas*, 146 Wn.2d at 406, 47 P.3d 127.

Second, the police had knowledge of no facts indicating Ms. Rainwater was armed.

Third, the police had information Ms. Rainwater had committed fourth degree assault, but, again, this is the most de minimis form of assault that is criminalized in Washington.

Fourth, the police did know Ms. Rainwater was in her home.

Fifth, the police had knowledge of no fact and no facts existed suggesting that Ms. Rainwater would escape if not swiftly apprehended.

Sixth, the entry into Ms. Rainwater's home was not made peaceably. Officer Hovey forced his way into Ms. Rainwater's home and immediately forced Ms. Rainwater to the ground with his knee in her back and handcuffed her, despite Ms. Rainwater not threatening Officer Hovey in any way.

The City's argument fails. No exigent circumstances existed that justified the warrantless arrest of Ms. Rainwater inside her home for a misdemeanor offense.

4. The City presented insufficient evidence to support a finding that Ms. Rainwater committed the crime of resisting arrest.

Ms. Rainwater was charged with resisting arrest in violation of Tacoma Municipal Code (TMC) 8.12.010(2). Under TMC 8.12.010(2), "Any person who shall intentionally...attempt to prevent a police

officer...of the City of Tacoma from lawfully arresting...her" is a disorderly person. As discussed in Ms. Rainwater's Opening Brief, in order to convict Ms. Rainwater of violating TMC 8.12.010(2) the City had the burden of demonstrating that Ms. Rainwater (1) intentionally (2) attempted to prevent (3) a City of Tacoma police officer (4) from lawfully arresting her.

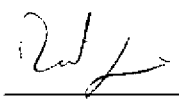
Because, as discussed above and in Ms. Rainwater's Opening Brief, the arrest of Ms. Rainwater was unlawful, the City presented insufficient evidence to support the jury's finding that Ms. Rainwater violated TMC 8.12.010.

II. CONCLUSION

For the reasons stated above and in Ms. Rainwater's Opening Brief, this court should reverse the Superior Court order, vacate Ms. Rainwater's conviction for resisting arrest, and remand this case to the trial court for dismissal of the charge with prejudice.

DATED this 14th day of November, 2016.

Respectfully submitted,



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I hereby certify, under penalty of perjury under the laws of the state Washington that on November 14, 2016, I mailed via first class US mail, postage prepaid a true and correct copy of the Appellant's Reply Brief addressed to:

Antonia Rainwater
P.O. Box 8143
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and I delivered via legal messenger a true and correct copy of the Appellant's Reply Brief to:

City of Tacoma Prosecuting Attorney's Office
930 Tacoma Avenue South
Tacoma, WA 98402

DATED: November 12, 2016.

Respectfully Submitted,

By _____
Reed Speir, WSBA No. 36270

LAW OFFICE OF REED SPEIR

November 12, 2016 - 5:04 PM

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